

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
DAN HALLOWELL NURSERY, )  
Appellant, )  
vs. )  
SOUTHWEST AIR POLLUTION )  
CONTROL AUTHORITY, )  
Respondent. )

PCHB No. 204

FINDINGS OF FACT,  
CONCLUSIONS AND ORDER

This matter, the appeal of two civil penalties totaling \$75.00 for two alleged violations of respondent's Regulation I, came before the Pollution Control Hearings Board (Walt Woodward, hearing officer) as a formal hearing held in respondent's Vancouver, Clark County, offices at 1:30 p.m., November 21, 1972.

Appellant appeared and was represented by his attorney, Barry J. Dahl. Respondent appeared through its counsel, James D. Ladley. Thomas Archer, Kelso court reporter, recorded the proceedings.

Witnesses were sworn and testified. Exhibits were offered and

1 admitted.

2 On the basis of testimony heard and exhibits examined, the  
3 Pollution Control Hearings Board prepared Proposed Findings of Fact,  
4 Conclusions and Order which were submitted to the appellant and  
5 respondent on February 1, 1973. No objections or exceptions to the  
6 Proposed Findings, Conclusions and Order having been received, the  
7 Pollution Control Hearings Board makes and enters the following:

8 FINDINGS OF FACT

9 I.

10 On June 26, 1972 and on September 22, 1972 at the Dan Hallowell  
11 Nursery, 410 Scott Avenue, Woodland, an incorporated area of Cowlitz  
12 County, small outdoor fires of natural vegetation and wastepaper burned.

13 II.

14 Field Notices of Violation were issued to appellant by respondent  
15 on the days of both fires. Subsequently, by certified mail, respondent  
16 invoked against appellant a civil penalty of \$25.00 for the June 26,  
17 1972 fire and a civil penalty of \$50.00 for the September 22, 1972 fire.  
18 These civil penalties are the subject of this appeal.

19 III.

20 Section 4.01 of respondent's Regulation I makes it unlawful to ignite  
21 an outdoor fire without a permit in respondent's area of jurisdiction,  
22 which includes Cowlitz County. Respondent's "open outdoor fire policy",  
23 adopted in March, 1972, in response to a limited burning policy authorize  
24 in 1972 by the Legislature by amendments to Chapter 70.94 RCW, establishe  
25 certain periods during the year when, in Cowlitz County, natural  
26 vegetation may be burned "with proper permit"; the period from the third

27 FINDINGS OF FACT,  
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1 Sunday in May until the last Friday in October is not one of those  
2 permissive periods; the "open outdoor fire policy" permits outdoor natural  
3 vegetation fires in unincorporated areas of Cowlitz County. A "single  
4 permit policy", ratified by both the State Department of Natural Resources  
5 and respondent in March, 1972, stipulates that the Department of Natural  
6 Resources will not issue outdoor burning permits, except for certain fire  
7 hazard reasons, in areas "restricted" by respondent.

8 IV.

9 On April 19, 1972, appellant was warned about outdoor burning  
10 violations by respondent and was informed that information on permits and  
11 other open burning regulations could be obtained by telephoning the  
12 Woodland City Hall.

13 V.

14 Appellant did not obtain a permit for the fire of June 26, 1972.

15 VI.

16 On September 22, 1972, appellant noticed that a neighbor, Mr. Hollie  
17 Leathers, operator of a small nursery, was burning natural vegetation  
18 outdoors. Mr. Leathers told appellant that he had called the Woodland  
19 City Hall and had been referred to a toll free telephone number to  
20 reach the State Department of Natural Resources. Appellant called this  
21 number and was informed that he could burn outdoor vegetation on  
22 September 22, 1972. Appellant, believing at the time that the location  
23 of his proposed fire was outside of the Woodland city limit, did not  
24 inform the State Department of Natural Resources that he was a resident  
25 of Woodland. Subsequently, appellant learned that the location of his  
26 September 22, 1972 fire was inside the Woodland city limit.

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VII.

Mr. Leathers, also cited for a violation of respondent's Regulation I for his fire of September 22, 1972 was subjected to a \$50.00 civil penalty which was suspended by respondent.

VIII.

Public notice of respondent's "open outdoor fire policy" of March, 1972 was limited to requested articles in newspapers and on radio broadcasts. There was no legal publication of the "open outdoor fire policy".

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS

I.

Warned by respondent on April 19, 1972 about outdoor burning violations and informed as to where information and permits could be obtained, appellant made no attempt to obtain a permit or seek information in connection with the fire of June 26, 1972. Clearly, then, appellant on June 26, 1972 was in violation of respondent's Regulation I, Section 4.01.

II.

The fire of September 22, 1972 appears to be a different matter. Appellant sought a fire permit and, after making a call to what he thought was the appropriate governmental agency, received approval for his proposed fire from the State Department of Natural Resources. That he reached an inappropriate agency which may have exceeded its jurisdiction under the "single permit policy" can be construed only as

1 a mitigating circumstance. In this connection, the Pollution Control  
2 Hearings Board, while commending respondent for its efforts to achieve a  
3 "single permit policy", comments that much apparently remains to be done  
4 to make this policy understandable to the general public.

5 Therefore, the Pollution Control Hearings Board makes this

6 ORDER

7 The appeal to the civil penalty of \$25.00 for the fire of June 26,  
8 1972 is denied. The appeal to the civil penalty of \$50.00 for the fire  
9 of September 22, 1972 is sustained.

10 DONE at Olympia, Washington this 3rd day of April, 1973.

11 POLLUTION CONTROL HEARINGS BOARD

12 Walt Woodward  
13 WALT WOODWARD, Chairman

14 James T. Sheehy  
15 JAMES T. SHEEHY, Member

16  
17 W. A. GISSBERG, Member

18 Mr. W. A. Gissberg became a member of this Board on January 15,  
19 1973 and does not care to participate in this matter which he did not  
20 hear originally.

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26 FINDINGS OF FACT,  
27 CONCLUSIONS AND ORDER